IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.765 OF 2006
ALONGWITH
CIVIL APPLICATION NO.1139 of 2006

M/s.Shrikishan Cooperative Housing
Society Ltd. ...Appellant
Orig.Def.No.1.

V/s.

M/s.Siddeshwar Cooperative Housing
Society Ltd., & Anr. ...Respondents
(No.1. Orig.Plantff.
(No.2.Orig.Def.No.2.

Mr.Amol P. Mhatre for Appellant.
Mr.R.D. Suryawanshi for Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : 10th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellant and learned counsel for Respondent No.1.

2. The Appellant is challenging the Judgment and Decree passed by the 3rd Joint Civil Judge(S.D.), Thane, which has been confirmed by the Joint District Judge, Thane whereby Appellant-

Defendant No.1 is restrained from obstructing/preventing the Respondent No.1/Plaintiff and its members and visitors from using the suit access and it was declared that the Plaintiff-Society i.e. Respondent No.1 herein and its members have got absolute and uninterrupted right over the suit access.

3. Learned counsel appearing on behalf of the Appellant submits that both the lower courts below have not considered fact that document at Ex.44 was not proved and yet it was taken on record. He submits that the Trial Court has misconstrued evidence on record and has recorded finding which is not borne out of the record. He invited my attention to the Ex.44 which is declaration allegedly given by the members of the Appellant-Society in favour of Respondent-Society accepting right of Respondent and its members of having access over the suit land. He also submits that there is variance and inconsistency in the finding which is recorded by both the courts below. He submits that the Trial Court on the one hand, has stated that the document in question was executed in the year 1996 whereas

the Appellate Court has stated that said document was executed on subsequent date. He submits that both the Trial Court and Appellate Court have also stated difference in the number of members in respect of finding given by the both the lower courts below.

4. It is not possible to accept submissions made by the learned counsel for the Appellant. There is no substantial question of law involved in the Second Appeal. There is concurrent finding recorded by the lower courts below regarding declaration which was given by the Appellant-Society in favour of Respondent and its members. Second Appeal is, accordingly dismissed.

5. Since the Second Appeal is dismissed, Civil Application does not survive and is accordingly disposed of.

V.M. KANADE, J.